IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 15187 of 2004(G)

PETITIONERS:
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1. **K.S.PRASANNAKUMARI,**
   CHANDRABHAVANAM, CHERUKARA P.O., KAVALAM, H.S.A.,
   GOVT. HIGHER SECONDARY SCHOOL, KARAPUZHA,
   KOTTAYAM.

2. **P.ANITHA,**
   SUNGLOSS, PAKKIL P.O., KOTTAYAM H.S.A.,
   GOVT.HIGHER SECONDARY SCHOOL, KUKRUCHY, KOTTAYAM.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENT:

+ DIRECTOR,
HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.15187/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PORTION OF THE LIST PREPARED IN THE YEAR 2001 DT. NIL.

EXT.P2:- COPY OF THE RELEVANT PORTION OF THE LIST PREPARED IN THE YEAR 2002, DT. NIL.

EXT.P3:- COPY OF THE RELEVANT PORTION OF THE LIST PREPARED IN THE YEAR 2003, DT. NIL.

EXT.P4:- COPY OF THE OBJECTIONS SUBMITTED BY THE PETITIONER DT.29.4.04 BEFORE THE RESPONDENT.

EXT.P5:- COPY OF THE FRESH SENIORITY LIST DT. 31.7.05 PUBLISHED BY DIRECTOR, DEPARTMENT OF HIGHER SECONDARY EDUCATION.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.15187 OF 2004

Dated this the 9th day of August, 2007

JUDGMENT

Petitioners are High School Assistants in Government service, aspiring for appointment as Higher Secondary School Teachers as against 25% of the vacancy. The only issue that is relevant for decision in this case is as to whether the entitlement for promotion has to be determined on the basis of the date of acquisition of the qualification and the date of occurrence of vacancy or whether all persons who possess the qualification during a particular academic year could be brought into a list of entitled candidates without reference to their date of acquisition of qualification, in which event, the inter-se seniority of the candidate will prevail for appointment as HSST. If the latter course is adopted, a person who strives and acquires the qualification for being appointed as HSST, i.e. to say qualification of SET at an earlier point of time, will be deprived of his entitlement to have any consideration on merits, when a senior of such a person, who could not acquire SET qualification

during that year, acquires SET qualification in the subsequent year before the actual promotion of the person who obtained SET qualification earlier. As on the date of occurrence of a vacancy, if more than one person hold SET Qualification, the senior has to be preferred for appointment against that vacancy. However, a vacancy occurring on a particular date cannot be left unfilled and later on filled by a candidate, who secures the SET qualification after the date of occurrence of the vacancy. It is this principle that has to be followed in the matter of reckoning the date of which an HSA will be entitled for placement as HSST.

2. Having regard to the statement in the counter affidavit that if the petitioners point out any specific case of supercession, that will be considered by the Director.

This writ petition is disposed of with the aforesaid declaration as to law and directing that if the petitioners point out any specific case of infraction of the aforesaid opportunity,

the Director shall take appropriate action in accordance with law to rectify such situation.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.